

MASS. AGI. 2: AT 85/8

# The Attorney General's

## Guide for

## Homeowners

UMASS/AMHERST



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GOVERNMENT DOCUMENTS  
COLLECTION

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University of Massachusetts  
**A Consumer Reference for:**

**Mortgage Scam Awareness**

**Home Improvement Contracting**

**Information on Title 5**

**Electric Utility Deregulation**

**Obligations as a Landlord**

**Using the Consumer Protection Act**

**and more...**

*This publication is a compilation of several publications from the Office of the Attorney General that were written to help educate consumers on issues relevant to both homeowners and potential homeowners.*

*This guide was produced specifically for the Attorney General's exhibition on Homeownership and Repair at the Eastern States Exposition in Springfield.*

*The Attorney General's Office acknowledges the following organizations, businesses and agencies who either co-wrote or funded some of the publications used to create this special guide:*

The Office of Consumer Affairs

Massachusetts Bankers Association

Massachusetts Department of Telecommunications and Energy

Massachusetts Association of Realtors

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# **Don't Lose Your Home to a Mortgage Scam**

*In good economic times it seems like every possible money lender is offering a mortgage or refinancing deal. With so much out there from which to choose, it is often difficult to separate good and legitimate deals from others that may be less desirable.*



**To help with this process, follow these basic tips:**

**1. Do Not Do Business With An Unlicensed Mortgage Broker.**

Generally, if a business promises that it can help you get a mortgage loan, the business must be licensed in Massachusetts as either a mortgage lender or a mortgage broker by the Division of Banks.

**2. Do Not Sign Blank or Incomplete Forms.**

NEVER sign a mortgage document that is not completely filled in. Understand the forms you sign. Ask questions. Have your lawyer review any forms before you sign them and get copies of everything.

**3. Do Comparison Shop Before Signing.**

In particular, compare the annual percentage rate (APR), the number of points, fees and terms for at least two lenders.

**4. Do Not Sign for More Than You Can Afford.**

What will your monthly payment be? If your first mortgage payment totals more than 28% of your monthly income before taxes and your total debt payments are more than 36%, you may run the risk of not being able to afford the loan.

**5. Do Not Sign Based On Future Rates.**

Promises of future low rates cannot be counted on unless they're in writing. The loan you sign is the loan you own.

**6. Do Not Pay large Fees For A "Seminar" Or Advance Fees To A "Home-Buying Service" Business.**

Be wary of businesses that demand large fees for seminars or up front fees for home-buying programs. If the business is legitimate, it is very unlikely that it will charge you large advance fees. Mortgage broker or lender fees typically are paid at the closing.

## **7. Beware Of "Easy Credit".**

Say no to any deal where you are told that your credit history or income does not matter.



## **8. Seek Legal Advice.**

Loan transactions are very complex and can be confusing. Protect yourself by hiring your own lawyer. Remember the lender's attorney does not represent your interest.

## **9. Read All Disclosures.**

When you apply for a loan, you will be given a number of disclosure statements about your loan. Read them carefully. If you don't understand something, ask your broker or lender to explain. Have your lawyer review all documents and ask him or her to explain all disclosures.

## **10. Check Your Cancellation Rights.**

If you refinance your mortgage or take out a second mortgage, you may be entitled to cancel the contract within three business days of signing.

## **Helpful Resources**

### **Office of the Attorney General**

**Boston: ( 617) 727-8400**

**Springfield: (413) 784-1240**

For more information on your rights as a consumer, referal information, mediation, consumer complaints and company complaint history

### **Division of Banks**

**(617) 727-2102**

For license status on state chartered banks, state chartered credit unions, mortgage brokers, and mortgage companies

### **Better Business Bureaus**

**Boston: (617) 426-9000**

Consumer complaints and company complaint history

**Worcester: (508) 755-2548**

**Springfield: (413) 734-3114**

### **Federal Reserve Bank of Boston**

**(617) 973-3755**

Mortgage questions and publications

# Guide to Home Improvement Contracting



**Home improvements can be a major investment for the average homeowner, and when things go wrong your plans for a dream house can turn into a costly nightmare.**

**Avoid home improvement problems in the first place by being actively involved in every step of your project, from the initial planning to the finished product, and by asserting your legal rights. This guide should help you through this important process.**

## **Take your time, Be Informed, and Plan Ahead**

- Know what you want and can afford:** Have a good idea of the basic design of your project, the materials required and the total cost of your home improvements.
- Communicate your plans clearly:** Be specific in explaining to the contractor what it is you want. Work with the contractor to provide clear, detailed specifications and include them in your written contract.
- Create a workable budget that is realistic and affordable** before you accept any bids from contractors or sign a home improvement agreement.
- Seek advice from professionals** familiar with your remodeling or home improvement job: check with trade associations and with your local building inspector regarding building codes and standards before you sign a contract or begin work on your house.

## **Choose the Right Contractor**

There are many highly qualified and reputable home improvement contractors in the industry. Unfortunately, not every person who holds himself or herself out to be a home improvement contractor is registered, experienced, or qualified for the project that you have in mind. Your most important challenge in your home improvement planning is hiring the right contractor for your job.

# ***First Steps to Finding a Contractor***

**Registration:** By law, most contractors and subcontractors performing residential home improvements on owner-occupied homes must be registered with the state. The few exceptions to this requirement include licensed professionals, such as plumbers and electricians; part-time or small job contractors; and other contractors who specialize in certain kinds of work, including landscaping, central heating and air conditioning installations, and interior painters.

## **How to Know if a Contractor is Registered**

- Check with the Home Improvement Contractor Registration Program at the Board of Building Regulations and Standards (617) 727-8598 to ask if your contractor should be registered and, if so, whether the contractor is currently registered with the Board.
- Ask your contractor to show you his or her contractor's Registration Certificate issued by the state;
- Look for the six-digit Registration Number that contractors are required to display on all home improvement advertising (including the yellow pages), contracts, and building permits.



*Hiring a registered home improvement contractor is vital to assuring that all your rights are protected under the law, and it is an important first step in selecting your contractor. But registration alone is not a guarantee of high quality performance; you need to do more homework before you settle on a choice.*

**References:** Interview two or three contractors and check out their references with friends, neighbors, or former clients who are familiar with the contractor's work, his or her business practices, and his or her reputation for reliability.

**Former Projects:** Ask to see samples of the contractor's work, particularly models of jobs similar to the improvement project you want for your home.

**Estimates:** Get written estimates from at least two or three contractors that include detailed specifications for the job, the materials, labor, time line, and the total charges for the work.

**Complaint History:** Check with the Attorney General's Office or with your local consumer group to see if consumer complaints have been filed against the contractor and with the local small claims court to see if judgments were entered against him or her for incomplete or shoddy workmanship, or for other alleged unfair or deceptive practices.

## Sign the Right Contract

A home improvement contract is a written agreement defining exactly what work will be performed, the materials used, the start and completion dates, the total cost of the project, and a payment schedule.

- **Get it in Writing:** By state law, every contract between a home improvement contractor and an owner to perform residential contracting services costing over \$1,000 must be in writing.

*Never enter into any home improvement agreement that is not in writing and does not include at least the following provisions and notices required by law:*

- The **Identification of the Contractor** and subcontractors, including their full names, street addresses, and contractors' registration and tax I.D. numbers; the signature of all parties; and the date the contract was signed;
- The **Complete Agreement** between you and the contractor, with a detailed description of the work to be done and the materials to be used;
- The **Total Price**, including materials, labor, and any additional charges agreed upon;
- The **Payment Schedule** — by law, a contractor may not collect more than one-third of the total charge for the project in advance, excluding the costs of any special-order materials. The contractor may not demand final payment until all work is performed to your satisfaction;
- The **Start and Completion** dates for the project;
- A **Registration Notice** that certain contractors must be registered with the state before they can perform residential home improvement contracting;
- A **3-Day Cancellation Notice** informing you of your right to cancel an agreement signed in your home, or at a place other than at the contractor's office or business — including Home Shows.
- A **Permit Notice** of any construction-related permits you need for your project, and a warning that the contractor should obtain those permits for you.
- **Other terms and conditions, including any Guarantees or Warranties** for labor or materials.
- A **Blank Space Notice** warning you not to sign a contract that is incomplete, or where any required provisions are missing.

**Remember, if a provision is not written in the contract, you'll have a hard time proving it was part of the deal.**



## ***If Problems Arise...***

When things go wrong because of shoddy or incomplete work, contract disputes, cost overruns, improper materials, or other home improvement problems that you cannot resolve with your contractor, you have several options available.

### **Mediation Services:**

The Attorney General's Office and your local consumer group have experienced mediators who may be able to help resolve disputes without additional cost to you. For more information, call the Attorney General's Consumer Complaint and Information Section at (617) 727-8400.

### **Arbitration and the Home Improvement Guaranty Fund:**

If you hired a registered home improvement contractor you may be able to submit your dispute to an arbitrator through the State Arbitration Program. If you win an award (or a court judgment), you may be eligible to recover up to \$10,000 for actual monetary losses from the state Guaranty Fund. For more information about the Arbitration Program and the Guaranty Fund, contact the state Office of Consumer Affairs at (617) 727-7780.

### **Litigation:**

If informal mediation or arbitration fail, you may have to resort to court action — either through small claims court, if your claim is under \$2,000, or through your local district or superior court. For educational materials on the small claims court process and on the consumer protection laws, contact the Attorney General's Consumer Hotline at (617) 727-8400.



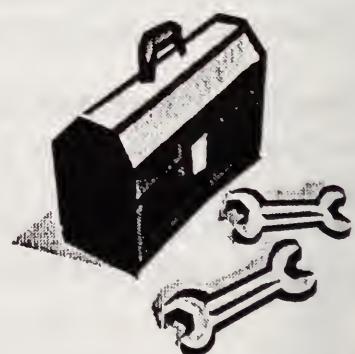
***A Word on Financing:*** Under law, home improvement contractors may not act as mortgage brokers or agents of mortgage lenders in connection with residential home improvement transactions. Contractors may not offer you financing for your project by offering, preparing, negotiating, or arranging a mortgage loan on your home for any lender.

You should know the entire cost of your proposed project, including any interest charges, and then comparison shop for the financing you need from reputable lenders through personal, bank, or home equity loans.

***Doing your homework:*** Remember, whereas all Massachusetts banks and their mortgage subsidiaries are government supervised, some mortgage companies, brokers, and lenders may not be licensed, as required by state law. Before entering into any financing arrangement, call the state **Division of Banks** to check on a company's license and status. (617) 727-2102.

## HOME IMPROVEMENT CHECKLIST

- Check to see that your contractor has complied with the home improvement registration requirements and that he or she is currently registered with the state.
- Verify the name, address, telephone number, and references of the contractor before you enter into any home improvement agreement.
- Solicit at least two or three bids from contractors for your project, and get complete, written estimates for the detailed specifications included in your home improvement plan.
- Include in your contract all the terms, conditions, warranties, and oral promises concerning your home improvement project.
- Do not sign a contract until you have thoroughly read and understood all its provisions, notices, and terms. Never sign a written agreement that is not completely filled out.
- Obtain and keep copies of every written document, including contracts and receipts from suppliers and others providing materials for your project.
- Take your time, and do not submit to high pressure sales tactics by a contractor or sales representative.
- Know about your three-day cancellation rights, and do not hesitate to cancel a home improvement contract if you are not completely satisfied with it.
- Never pay for the entire job in advance or make scheduled payments before the agreed-upon terms are met and the work is completed to your full satisfaction.
- Do not sign a completion certificate until the work is done fully and properly according to the specifications and time line in the contract.
- Insist the contractor pull all permits for the job. Never pull your own permit, because you may lose certain rights if you do.



## **Helpful Resources**

*For information on a home improvement contractor's complaint history, to file a complaint, or to receive general information and educational materials:*

The Attorney General's Office  
Consumer Complaint and Information Section, (617) 727-8400  
The Better Business Bureau (617) 426-9000

*To check on a Home Improvement Contractor's Registration:*  
The Board of Building Regulations and Standards, Home Improvement Contractor Registration Program (617) 727-8598

*To check on banks, credit unions, mortgage brokers, and lenders:*  
The State Division of Banks (617) 727-2102

*To Request Mediation Services:*  
The Attorney General's Office Consumer Complaint and Information Section (617) 727-8400; or your local Consumer Group

*For information about the State Arbitration Program and Home Improvement Guaranty Fund:*  
The Office of Consumer Affairs  
Home Improvement Arbitration Program (617) 727-7780

*For general information:*  
The National Association of the Remodeling Industry ("NARI")  
Eastern Massachusetts Division (800) 464-NARI  
Western Massachusetts Division (413) 747-3172  
Home Builders Association of Massachusetts (800) 632-8168

## **Consumer Laws That Protect You**

The Massachusetts Consumer Protection Act, G.L. c. 93A  
Regulation of Home Improvement Contractors, G.L. c. 142A  
Registration and Enforcement of the Home Improvement Contractor Program, 780 CMR-6  
Home Improvement Contractor Arbitration, 201 CMR 14.00  
Home Improvement Contractor Guaranty Fund, 201 CMR 15.00  
The Attorney General's Mortgage Brokers and Mortgage Lenders Regulations, 940 CMR 8.00

# **TITLE 5**

## **Important Information Regarding Changes in Septic System Regulations**



**As of March 31, 1995, the state environmental code governing septic systems, commonly known as TITLE 5 regulations, requires inspections of septic systems and cesspools before a home is sold or enlarged.**

**In most instances, systems that fail inspection must be repaired within 2 years. In most cases, applications to install new systems or to upgrade existing systems submitted after January 1, 1996, will require that the soil evaluation test be performed by a DEP-approved soil evaluator. The regulations were revised on November 3, 1995, to encourage compliance with the regulations and to minimize financial hardships and delays for homeowners.**

**Homes that are not connected to a sewer system use septic systems or cesspools, both of which are regulated by the state Department of Environmental Protection (DEP) and local boards of health. A septic system has a tank, a distribution box, and soil absorption system commonly known as a "leach field." A cesspool has a pipe carrying waste from the home to a pit which distributes the liquid waste.**

### **Mandatory Inspections of Septic Systems or Cesspools**

#### **Title 5 requires inspections:**

- Within 2 years before the sale of a home or transfer of title (different rules apply for "shared systems" and condominiums), or
- In certain inheritance situations; for example, when a child inherits a house from his or her parent, or
- In certain insolvency proceedings; for example, sometimes in bankruptcy, tax taking or foreclosure, or

- When the use of the home is changed; for example, from residential to commercial use, or
- When the footprint of the house is changed, or
- When the home is expanded and a building or occupancy permit is required: for example, a bedroom is added to your home.
- If weather prevents an inspection at sale or transfer, the inspection must occur as soon as weather permits, but no later than six (6) months after the sale or transfer.

 **All septic systems and cesspools must meet the TITLE 5 requirements, but they must also comply with local board of health ordinances which can be more stringent than TITLE 5.**

**Even if you sell or transfer title to your home...**

**TITLE 5 does not require inspections when:**

- A mortgage is refinanced, or
- The system was inspected within 3 years before the sale and you have records proving that your system has been pumped annually since the inspection, or
- Title to the house is transferred from one spouse to another or placed in certain family trusts, or
- The local board of health issued a certificate of compliance within 2 years before the time of transfer of title, or
- The community has adopted a comprehensive plan approved by DEP requiring periodic inspections and the system was inspected at the most recent time required by the plan, or
- The homeowner has entered into an enforceable agreement, binding on subsequent buyers, with the board of health requiring an upgrade of the system or connection to the municipal sewer system within 2 years of transfer or sale.



# Signs A Septic System or Cesspool May Fail A Title 5 Inspection

- ✓ Backups of raw sewage
- ✓ Discharges of raw sewage to the ground surface
- ✓ System requires pumping 4 or more times per year
- ✓ The cesspool or leach field is below high ground water elevation
- ✓ System located too close to a drinking water supply, unless the local board of health says the system is adequate to protect public health and the environment
- ✓ System has a metal septic tank more than 20 years old



**Title 5 imposes stricter requirements on cesspools and privies.**

## **TITLE 5 INSPECTIONS**

Only inspectors and soil evaluators approved under the regulations can perform required system inspections and soil tests. A list of DEP-approved soil evaluators and system inspectors is available from your local board of health. Certified health officers, registered sanitarians, and professional engineers qualify automatically even though their names may or may not appear on the DEP-approved list.

### **Inspections**

The regulations allow for the inspection to be done in the least intrusive manner possible. As part of the inspection process, a cesspool must be pumped out and examined. A septic tank may be pumped, but it is not required—a leach field is usually not dug up.

If a system passes, the inspector is required to submit an approved system inspection form to the local board of health within 30 days, and the homeowner must provide a copy to the buyer. Prospective buyers and lending institutions may also require a copy of the approved inspection form.

If a system fails a required inspection, the inspector is required to submit the form to the local board of health within 30 days, and the homeowner must provide a copy to the buyer. The system must be repaired or upgraded within 2 years following inspection, regardless of whether the property is sold.



**However,**

- ✓ In certain circumstances, DEP or the local board of health may approve a longer schedule in order to achieve maximum feasible compliance with TITLE 5. For example, commitments to extend municipal sewers or to install shared systems within 5 years combined with adequate interim measures and an enforceable schedule, may mean a property owner does not have to install a new system or upgrade the existing system within the next 2 year period. **CHECK WITH DEP OR YOUR LOCAL BOARD OF HEALTH TO SEE IF YOU QUALIFY.**
- ✓ If the defect to the system is minor, a “conditional pass” may be issued, whereby once the defect is repaired or replaced with local board of health approval, the system passes inspection.

- The local board of health or DEP may impose a shorter period of time if a system presents an imminent public health hazard.
- Failure to comply with the requirements of TITLE 5 could result in penalties.

## **Inspection Costs**

The price of an inspection is not regulated. On average, expect to pay \$300 to \$500 for a TITLE 5 inspection.

## **Responsibility for Payment**

The owner of the property is responsible for compliance with TITLE 5. However, the seller, the buyer, and the mortgage lender may decide who will pay for the costs of the repair or upgrade, which can be negotiated as a part of the sales agreement. Mortgage lenders may require any repair or upgrade to be completed before closing or that funds for the cost of repair be placed in escrow before closing.

## **Costs of Repairs or Upgrades**

Homeowners can call the local board of health to inquire about typical costs in their community. On average, a simple repair may cost \$500; more extensive repairs and upgrades may cost up to \$12,000 or more.

## **PROTECT YOURSELF...**

- ✓ If a TITLE 5 inspection is required, time the inspection so that costs of the inspection and necessary repairs or upgrades are determined before closing.
- ✓ If you do not intend to sell your property, consider having a “voluntary inspection” performed. The results of voluntary inspections are not reported to the board of health or DEP. Such an inspection may allow you to voluntarily correct a problem before it worsens; but be sure to have any action approved by your board of health.
- ✓ Determine the physical location of your system and get all records, plans, certificates of compliance, past permits, inspection reports and water table and usage records pertaining to your system from your local board of health before hiring an inspector.
- ✓ Get a list of approved system inspectors and soil evaluators from your board of health. Only hire soil evaluators whose names appear on the list. Hire only inspectors from the list or certified health officers, registered sanitarians or professional engineers who are qualified automatically even though their names may not be on the list.
- ✓ To prevent an unscrupulous inspector from failing your system to generate repair business, consider hiring one person to inspect and another to design/install any repairs or upgrades.
- ✓ Avoid the quick fix; if a solution seems too inexpensive or too good to be true, it probably is.
- ✓ For repairs or upgrades, get more than one estimate. If costs seem excessive, talk to your system designer and local board of health to see if the design can be modified and still provide adequate protection of public health and the environment.
- ✓ Before signing a contract for a repair, upgrade or installation, ask for references and consult them. Make sure the contract specifies exactly the work to be performed, the costs, the payment schedule, any guarantees, and that the contractor will obtain all required permits.
- ✓ If you are selling or buying a home, be sure to negotiate and specify who will pay for the cost of the inspection and any necessary repairs. Explore financing options. Consider consulting a lawyer who is familiar with TITLE 5.
- ✓ Have your system pumped every 3 years, or annually if you have a garbage disposal system, and maintain all pumping records for future reference.

**Be sure your system is in compliance not only with TITLE 5, but also all board of health ordinances. Title 5 (like any regulation) may change.**

# For Financial Assistance

## Betterment Funds

Eligible towns can make low interest 20-year loans to low-to-moderate income homeowners, repaid by adding an annual "betterment" to their tax bill. Call your local board of health to see if your town participates in the Betterment Fund Program.

## Home Improvement Loan Program

HILP loans are available for owner occupied residential dwellings for amounts from \$2,500 to \$15,000. Loan payments are generally lower than conventional loans because no points are charged. Contact a MA Home Financing Agency affiliated local rehabilitation program.

## Rural Economic Development Services Loans

RECD loans are low interest loans available to elder or low-income homeowners in rural areas. Eligibility information and applications are available from RECD.

## Homeowner Septic Loan Program

Local banks and mortgage companies may utilize the FHA Title I loan program to provide loans for septic repairs. Contact your lender or DEP for details.

## Conventional Lenders

Call various banks and lending institutions regarding private financing options.

## Tax Credit

An owner of a residential property used as his or her primary residence is allowed a tax credit of up to \$1,500 per year for expenses incurred from the repair or replacement of a failed cesspool or septic system. This credit is effective for any tax year beginning on or after January 1, 1997. Contact the Dept. of Revenue for more information.

## **Helpful Resources**

### **DEPT. OF ENVIRONMENTAL PROTECTION**

#### **TITLE 5 Hotline**

(800) 266-1122 or (617) 292-5886

### **LOCAL BOARDS OF HEALTH**

### **OFFICE OF THE ATTORNEY GENERAL**

Consumer Complaint & Information Line (617) 727-8400

### **MASS. BETTER BUSINESS BUREAU**

(617) 426-9000      (413) 734-3114      (508) 755-2548

### **NATIONAL SMALL FLOWS CLEARINGHOUSE**

(800) 624-8301

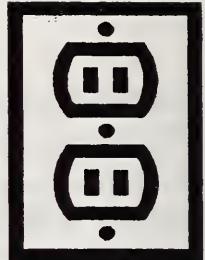
### **MA HOUSING FINANCE AGENCY (HILP LOANS)**

Consumer Information Line (617) 854-1020

### **RURAL ECONOMIC DEVELOPMENT SERVICE LOANS (RECD LOANS)**

(413) 253-4330

# Know Your Rights... When Buying Electricity



**A NEW MASSACHUSETTS LAW** now allows consumers to shop for electricity. In the past, your local electric utility provided all three basic components of electric service: generation, transmission, and distribution. Effective March 1, 1998, consumers may choose to buy electricity from a company that generates it or from a marketer that sells electricity. Transmission and distribution of electricity to your home or business will still be provided by your current electric company and will still be regulated by federal and state authorities to ensure service quality and to review rates.

## What You Need to Know

**THERE IS NO NEED TO RUSH:** Choice began March 1, 1998, however, you have seven years to choose a competitive power supplier. If you did not make a selection on or by March 1, you were provided the Standard Offer Service and you should have seen a 10% reduction in your electric bill. Participating in the Standard Offer Service does not limit you from selecting a new electric supplier during this seven year period.

## Tips for Customers

Marketers, aggregators and sales representatives may be contacting you by telephone or mail. Most of these solicitations will be truthful and sincere, but beware.

You will be offered new, unfamiliar choices, choices that are intended to lower the cost of electricity and improve service quality. However, you must be on the lookout for scam artists and potential rip-offs. Some of the same types of "rip-offs" and "cons" that have plagued other deregulated industries will be tried in the new electricity market. They will use the same old tricks and may even invent new ones.

## Avoiding Potential Scams

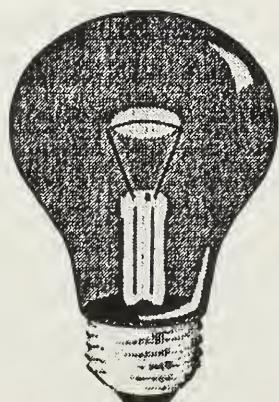
### **Beware of the “can’t lose” money-making scheme.**

Some advertisements may state that you can become a millionaire from the new competitive electric industry. Be careful about “multilevel” marketing schemes, such as pyramid marketing ventures. Be cautious about paying an up-front fee to participate in any scheme. Research any offer you are considering and deal only with competitive electric suppliers who have been licensed by the Department of Telecommunications and Energy. In short, be skeptical.

### **Demand your rights on the phone and also in writing.**

Your best defense to any solicitation is to know your rights as a consumer. If you are called by a telemarketer urging you to change electric suppliers, and you are considering a change, be prepared to gather all the information that you possibly can. Here are some of your rights as a consumer:

- 1. A marketer must inform you in writing** of the total cost of an item or service and any restrictions on getting or using it before you are obligated to pay for it.
- 2. Insist on written evidence of the terms** of any proposed agreement to purchase electric service prior to giving any credit card information over the phone. If someone calls asking you to confirm financial or personal information over the phone, refuse to do so. **Have them send their request through the mail.** If you have agreed to a certain supplier's service and then change your mind, you have three days in which to notify them of your decision.
- 3. Remember: it is illegal for marketers to misrepresent any information**, including facts about their goods and services.
- 4. Read the fine print.** Take your time reviewing the information and compare the terms with your existing service and other offers. Make an educated decision.



# Slamming

SLAMMING OCCURS when your service is changed by a competitive supplier without your permission. There are precautions you can take to prevent being "slammed," and steps that you can take if you believe that you have been "slammed" by an electricity supplier.

- Check your billing statement carefully each month. If there are unusual provider names, or unexplained or surprising charges on your statement, you may have been slammed.
- Avoid contests and other enticements that are unfamiliar and require your signature. Although illegal, your signature might be used to switch your power supply.
- If you have not switched your electric supplier and you receive a notice indicating that you have, notify the distribution company that you did not authorize the change in electric suppliers. Then call the electric supplier of your choice and confirm that you still wish to be their customer.
- Telemarketing is often used to encourage customers to switch electricity providers. If you are not interested in switching your service, clearly indicate that to the telephone solicitor. To prevent further calls, ask to be placed on the company's "Do Not Call" list.
- Another method used by marketers is direct mail. A company may send you a welcoming kit or an informational package that you did not ask for. Within the package the company may include a self-addressed prepaid postcard and state that you must return the card to refuse the service.  
*Note: If you ask for material and state over the telephone that you want a specific company to be your supplier, but then change your mind, you must return the card within three days.*
- The new law provides stiff penalties for marketers or competitive power suppliers who "slam" a consumer's service. If you have been slammed, contact the Department of Telecommunications and Energy to file a complaint.



# **Helpful Resources**

**Massachusetts Attorney General's Office**  
Regulated Industries Division  
200 Portland Street  
4th Floor  
Boston, MA 02114  
**(617) 727-2200**

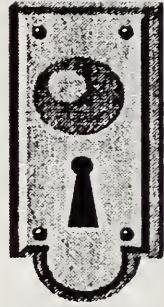
**Massachusetts Department of Telecommunications and Energy**  
Consumer Division  
100 Cambridge Street  
12th Floor  
Boston, MA 02202  
**1800-392-6066**

**Massachusetts Division of Energy Resources**  
100 Cambridge Street  
15th Floor  
Boston, MA 02202  
**1800-351-0077**

# Obligations As a Landlord

## What Every Small Landlord

### Should Know



If you own a building, and want to use part or all of it as residential rental property, you will want to know ahead of time what your legal obligations as a landlord will be.

## What Kind of Tenancy Do You Want to Offer?

There are two main kinds of tenancy. A tenancy based on a lease may give you the stability of a long term arrangement with a tenant, but also creates a long term commitment on your part. A tenancy-at-will provides greater flexibility than a lease, but does not require the tenant to commit to an apartment for more than a month at a time.

### Tenancy Based on a Lease

If you decide to offer a tenancy based on a written lease, you are not free to raise your tenant's rent or otherwise alter the terms of your contract with the tenant for the period covered by the lease. For this reason, it is to your benefit to go over the terms of the lease with a prospective tenant in detail, to make sure that the tenant is aware of and agreeable to rules such as "no pets." If your tenant abides by the terms of the lease, you may only end the tenancy early if the tenant agrees to let you out of the lease.

### Tenancy-at-Will

If you decide to offer a tenancy-at-will, the tenancy will last indefinitely until either you or the tenant decides to end it. It is wise to enter into a written agreement with a tenant-at-will, such agreement should include the amount of the monthly rent, and a clear description of any rules you expect the tenant to observe.

If you wish to end a tenancy-at-will, you must give your tenant sufficient advance notice, either thirty days ahead of time, or one month ahead of time (counting from the day the tenant's next rent payment is due) whichever is longer. Likewise, if the tenant wishes to move out of the apartment, she or he must give you prior notice, either thirty days ahead of time, or one month ahead of time (counting from the day the next rent payment is due) whichever is longer.

To raise a tenant-at-will's rent, you must follow the same procedure, informing your tenant of the rent increase thirty days before it is to take effect, or one month before it will take effect (counting from the day the next rent payment is due) whichever is longer. If the tenant does not accept your new terms, she or he must move out before the day the "new" tenancy begins. Note, however, that you must obtain approval from the appropriate governmental authorities before raising the rent of a tenant receiving a public rent subsidy.

### **What Rules Apply Regardless of the Form of Tenancy?**

In either kind of tenancy, the tenant must pay rent, follow the rules agreed upon with the landlord, and accept responsibility for any damage to the apartment that is more than just "normal wear and tear." The tenant has the right to occupy the apartment, and you may only enter under certain circumstances. You must arrange with your tenant in advance to enter the apartment to make repairs; to inspect the condition of the apartment; or to show the apartment to prospective tenants, buyers or real estate agents. However, you may enter an apartment without a tenant's approval if it appears that the tenant has abandoned it.

In either kind of tenancy, the landlord must provide an apartment that is safe, clean, and in compliance with a set of rules contained in the state Sanitary Code. A landlord also must live up to any promises in the lease or rental agreement, and may not ask a tenant to pay to repair "normal wear and tear" to the apartment. Under no circumstances may a landlord retaliate against a tenant for exercising basic legal rights, for instance, if a tenant joins a tenants' union or reports violations of the Sanitary Code.

### **What Every Lease or Rental Agreement Must Include and May Not Include**

Make sure that any lease or rental agreement you use has the following information: your name, address, and telephone number; the name, address, and phone number of the person responsible for maintenance and repair of the apartment; and the name, address and phone number of the person to whom a tenant should give copies of formal notices, complaints, or court papers.

If you require a tenant to pay a security deposit, the lease or rental agreement must show the amount paid, and must explain the tenant's right to the return of that security deposit. Always give a tenant a legible copy of the signed lease or rental agreement.

While many of the specific terms of a tenancy are open to negotiation, no landlord may include illegal terms in a lease or rental agreement. Examples of terms that would be illegal in either kind of tenancy are the following:



- ✓ the tenant must pay for the cost of repairing ordinary wear and tear to the apartment
- ✓ the tenant must pay for repairs to building areas beyond his or her apartment
- ✓ the tenant may not sue the landlord, or report violations of the Sanitary Code
- ✓ the tenant may not join a tenants' union
- ✓ the tenant must pay a late fee if a rent payment is even one day late (A lease or rental agreement may permit the landlord to charge a late fee if a rent payment is 30 days late.)

## Money Matters

### What Payments May You Ask for at the Beginning of a Tenancy?

A landlord may ask a tenant to make the following payments up front: the first month's rent, a security deposit to cover the cost of any damage the tenant does to the apartment beyond normal wear and tear, the last month's rent, and the cost of a new lock and key for the apartment. The amount of the security deposit may not exceed the amount of one month's rent.

### Security Deposits

Security deposits must be deposited in Massachusetts banks, in interest accruing accounts. Within the first month of a tenancy, you must provide the tenant with the name and address of the bank holding the tenant's security deposit as well as the account number for the money. Each year, you are required to pay your tenant the interest earned on the security deposit, or permit the tenant to deduct that amount from a rent payment.

As a landlord, you must give your tenant a "statement of condition" within ten days of receiving the tenant's security deposit. The statement of condition must describe any damage to the apartment that exists at the time you accept the security deposit. The tenant has fifteen days to return this document to you, with any comments, additions, or revisions. Keep this document because you may need to refer to it at the end of a tenancy, if you believe the tenant has caused damage to the apartment that did not exist prior to his or her tenancy.

When a tenancy ends, you must return the security deposit, plus interest, within thirty days. However, if the tenant has caused damage to the apartment that goes beyond normal wear and tear, you may withhold the cost of repairing that damage, if you give the tenant a written description of the damage and a copy of the repair estimate. You may also subtract from the security deposit the tenant's share of an increase in your property taxes on the building, but only if the tenant's lease specifically permits you to do so. However, you must keep complete records related to the maintenance and repair of an apartment, and must permit your tenant to see them if you withhold any of the security deposit.

## Last Month's Rent

You must also give a new tenant a signed receipt for advance payment of the last month's rent. The receipt must identify the apartment for which the last month's rent is being paid, and must inform the tenant that she or he is entitled to receive interest on that payment. The receipt must also show the amount paid and the date of payment. As with interest earned on a security deposit, the tenant is entitled to receive interest on the last month's rent each year.

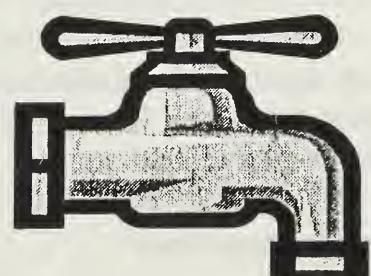
## What Happens if You Sell Your Property?

If you decide to sell a building in which you have tenants, you are required to provide the new owner with complete information about payments received from your tenants, as well as the accounts in which their money is being held. If you become a landlord by purchasing an apartment building, you must send a letter to your new tenants promptly, confirming that the former landlord has transferred all tenant funds to you, and providing your name, address and phone number.

## What Must a Landlord Provide in an Apartment?

In Massachusetts, landlords must provide their tenants with safe and "habitable" places to live. The following is an overview of the state Sanitary Code, which provides specific rules that landlords must follow.

- ✓ Water/Hot Water: The landlord must provide water for the apartment, with enough pressure that all plumbing fixtures can be used. The landlord is responsible for making sure that the hot water heater works, and may not charge a tenant for water or sewer costs.
- ✓ Heat: A tenant may buy the fuel used for heat, but the landlord is responsible for making sure the heating system works. Comfortable temperatures must be maintained during the heating season.
- ✓ Structure of the Building: The landlord must keep the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys and other parts of the building in good repair. The building should protect against wind, rain and snow, and be free of rodents and insects, as well as permanent dampness.
- ✓ Kitchen: The landlord must provide a working stove and oven unless the tenant's lease or rental agreement specifically says otherwise. A landlord need not provide a refrigerator, but



must provide enough space and an outlet for one. The landlord also must provide a sink.

- ✓ **Lead Paint:** The landlord has to remove or encapsulate all lead paint in an apartment if a child under the age of six is going to live there.
- ✓ **Cockroaches and rodents:** A landlord must keep a building free of rodents and cockroaches if there are at least two apartments in the building.
- ✓ **Snow Removal:** The landlord has to keep all doorways clear of snow so that tenants can come and go, but is not required to shovel the walk or plow a driveway or parking lot.

### **What to do if You Receive Notice of a Sanitary Code Violation?**

Be aware that your tenants are free to contact public agencies that enforce the state Sanitary Code to report violations. These include local boards of health, municipal inspectional services, and the state Department of Public Health. As a practical matter, responding to tenants' direct requests for repairs is not only appropriate, but also wise.

If a tenant contacts an agency charged with enforcement of the Sanitary Code, and you receive a formal report from an inspector that some aspect of one of your apartments violates the Sanitary Code, you risk running afoul of authorities if you fail to repair the problem within the time allotted in the report.

If an inspector has found serious "Code 1" violations of the Sanitary Code, the inspector's report will inform you that you must begin repairs within five days and must complete them within two weeks after they are begun. If you ignore such an order, your tenant has the right to make the repairs, and then deduct the cost of them from her or his rent, up to an amount equal to four months' rent. Your tenant will also have the option of moving out of the apartment.

### **May You Kick a Tenant Out?**

You do not have the right to lock a tenant out of an apartment or remove her or his belongings without a formal court order permitting you to do so, even if the tenant has ceased to pay rent. You may ask a court for permission to evict a tenant if she or he is not paying rent, or destroys the apartment, or violates a lease in some other way. You may also sue a tenant if you have ended a tenancy-at-will or if the tenant's lease has expired, and the tenant refuses to leave the apartment.

If you want to evict a tenant for failure to pay rent, you must give the tenant a written Notice to Quit, which will inform the tenant that she or he has fourteen days to move out of the apartment before you sue for eviction. Note that if the tenant responds by paying all of the rent owed within ten days of receiving the Notice to Quit, you may not proceed with the threatened suit, unless this is not the first time you have given that tenant a Notice to Quit in the past twelve months. If you want to evict the tenant for any reason other than failure to pay rent, you do not have to issue a fourteen day Notice to Quit.

### **The Eviction Process**

To sue to evict a tenant, you must file a Summary Process Complaint against the tenant in court, and give the tenant a copy of the Complaint, with a form called a Summons. The Summons notifies the tenant of the right to file an Answer to the Complaint, and provides the date, time, and location of the eviction trial.

### **Evicting a Tenant**

Ten days after rendering a decision in your favor, the court will send you an order called an “execution,” a copy of which you must deliver to the tenant, either with the help of a constable or by registered mail. The execution gives you the right to lock the tenant out of the apartment, and to take her or his belongings out of the apartment and place them in storage. You must inform your tenant in writing, at least 48 hours before arriving with the execution, of the date and time of the impending eviction.

After losing in court, your tenant may offer to pay you the full amount the judge has decided you are owed, plus the current rent payment. Note that if you accept this money, you may not use the execution and may not evict the tenant.

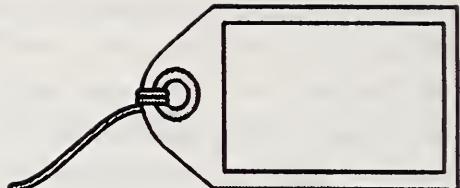
If you evict a tenant and have her or his things placed into storage, you are required to pay the storage company for three months of storage. However, you may seek reimbursement from your former tenant, and may even sue the tenant for that money.

### **Discrimination in Housing is Against the Law**

With the exception of owner-occupied, two-family buildings, It is against the law for a landlord to refuse to rent an apartment to someone because of the person's race, color, national origin, ancestry, gender, marital status, religion, age, sexual orientation, or military background, or because the person is blind, hearing impaired, or needs a guide dog. With some exceptions, it is also illegal to refuse to rent to someone with children.

# Using the Consumer Protection Statute

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**Repairs, replacements, and renovations are commonplace for the typical homeowner. But what happens when the homeowner pays for something that isn't exactly what was promised? Whether it be replacement windows that leak or the failure of a repair man to fix your broken furnace, Massachusetts General Laws chapter 93A, also known as the Consumer Protection Act, can provide a homeowner with valuable recourse. Chapter 93A specifically enables the Attorney General and consumers to take legal action against unfair or deceptive conduct in the marketplace.**

Under the terms of the Consumer Protection Act, the Attorney General is empowered to take action against businesses that engage in an act or practice of unfair or deceptive conduct. The Attorney General and his staff cannot represent individual consumers, and limited resources mean that the Attorney General cannot pursue every consumer protection matter that is brought to his attention. However, to assist consumers, the Attorney General's Consumer Complaint and Information Section, located in Boston, and a statewide network of 19 Local Consumer Programs work to provide consumer information, and seek to resolve consumer problems through an informal mediation process. Complaints coming into these offices may demonstrate a pattern of unfair or deceptive conduct which may form the basis of a formal legal action brought by the Office of the Attorney General.

**Consumers may also individually sue businesses that may have engaged in unfair or deceptive acts or practices against them.** For claims of actual damages under \$2,000, a consumer may file a legal action in the Small Claims session of the District Court or, if the claim involves housing issues, in the housing court Small Claims session. The Small Claims session is somewhat less formal than the procedures in other courts, has a far lower filing fee, and for these and other reasons, a consumer may choose to go forward without the assistance of an attorney. For actual damages requested greater than \$2,000, an action would need to be brought in District or Superior Court.

A consumer must begin any c. 93A action by sending the business a "demand letter," to which the business has 30 days to respond. This requirement, imposed by c. 93A, section 9, requires the consumer to make a written statement, containing specific information, to the business against whom the claim is made. The purpose of the demand letter is threefold.

- ☒ First, it puts a business on notice of a consumer's claim, and provides information about the nature of the claim.
- ☒ Second, it may encourage the business to negotiate without going to court.
- ☒ Third, it acts as a control on the amount of money damages that the consumer may ultimately recover if the claim is proven in court.

If you send a demand letter, the business may make a written offer of settlement to you. If you reject the offer and the court subsequently finds that the offer was reasonable in relation to the injury suffered, the court can limit your recovery to the amount of the settlement offer. If the business makes no offer of settlement, or if the court finds that the offer was unreasonable, and finds in your favor, then the recovery to you will be your actual damages or \$25, whichever is greater. If the court finds that the violation was willful, or that the refusal of the business to settle was in "bad faith, with knowledge or reason to know it violated" the Consumer Protection Act, then it may award you two to three times your damages, or \$25, whichever is greater. If the court finds in your favor, you are entitled to be awarded reasonable costs and attorney's fees; however, no fees will be awarded if the court finds that you rejected a reasonable written offer of settlement.

### **The demand letter must:**

- ☒ Be sent at least 30 days prior to the filing of any court action. It is a good idea to send two copies of the letter, one by certified or registered mail, so that you have a record it was sent, and one by regular mail, in case the business refuses the certified or registered mail. Remember to keep a copy of the letter sent, and keep the receipts from the post office for the certified or registered mail. These will be helpful if you do need to file in court.
- ☒ Identify yourself (the claimant). You can do this by including your full name and residential address on the letter.
- ☒ Reasonably describe the act or practice at issue, by providing a brief factual account of what happened, including dates upon which events occurred. Take a look at any contracts, repair slips and any notes you have made. Describe specifically the act or practice you believe to be unfair or deceptive. You may, but need not, refer to particular laws you believe were violated when describing the unfair or deceptive acts or practices.
- ☒ Identify the injury suffered. Describe the money or property lost as a result of the unfair act. You must indicate to the business the consequences of the unlawful practice. For example, the failure of a repair person to fix the item he or she was supposed to fix, or to remedy shoddy repairs, resulted in payments for improperly performed services. You will want to find out what it will cost to remedy the unfair or deceptive act or practice, too, to help the court determine your actual damages.

# Sample Demand Letter

Your Street Name, Number, (Apt. #)  
Your City, State, Zip Code  
Month, Day, Year

Owner/President of Business

Name of Business

Street Address

Town, State, Zip Code

Dear Mr./Ms. Businessperson:

I am writing to you under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, the Consumer Protection Act. I am writing to request relief as outlined in that statute.

On or about (date), the following unfair or deceptive act(s) or practice(s) occurred: *Describe the events as they occurred, including the conduct and time they happened. You may have more than one paragraph here, if you believe that there was more than one unfair or deceptive act that occurred at one time, or if there were multiple times that you were subjected to unfair or deceptive acts or practices.*

I believe the(se) acts or practices are declared unlawful by Section 2(a) of Chapter 93A, which declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce unlawful. *If you are aware of the violation of a specific law or regulation, you will wish to quote the text of that law or regulation here, by saying that you believe the conduct is a violation of [regulation or law number], which provides: then quote the applicable text.*

I have suffered injury or loss of money or property (in the amount of), (or, as follows:) *Describe why you have been injured in this amount; if you have given the business an opportunity to fix poor repairs, for example, and they have not done so, put that information here.*

This letter serves as my request for the following relief: (relief or amount of damages you seek). Under the provisions of Section 9 of Chapter 93A, I am providing you with the opportunity to make a written offer of settlement of this claim within 30 days. If you fail to make a good faith offer of settlement in response to this request, and I institute legal action, a court may award me double or triple damages, attorney's fees and costs if the court finds in my favor.

I may be reached at the address written above, or at (phone number) between the hours of: ( ). I look forward to hearing from you.

Sincerely,

(Signature)

Your Name (printed or typed)

# Additional Resources for Homeowners

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## CABLE TELEVISION

The Cable TV Commission  
(617) 727-6925

## HEATING ISSUES

The Home Energy Assistance Team (HEAT)

Massachusetts Low-Income Home Energy Assistance Program  
1-800-632-8175

## HOME OWNERS' INSURANCE

The Attorney General's Office; Regulated Industries Division  
(617) 727-2200

## MORTGAGE and FIRST TIME BUYER ISSUES

The Massachusetts Bar Association Lawyer Referral Service  
(617) 542-9103.

The Office of the Attorney General

*(For materials on mortgage regulations in seven different languages)*  
(617) 727-8400

Division of Housing & Community Development

*(For first-time homeownership opportunities)*  
(617) 727-7130

Massachusetts Housing Finance Agency (MHFA)

*(For information on below-market interest rates for first-time buyers)*  
(617) 451-2766

## PROPERTY TAXES

The Department of Revenue Customer Service Bureau  
(617) 887-6367

## UTILITIES

The Department of Telecommunications and Energy

*(For questions or complaints regarding telephone and electrical services)*  
(617) 727-3531

Your local telephone company

The Federal Communications Commission  
(617) 770-4023

# Listings for Local Consumer Programs



To better serve you, the Attorney General works in cooperation with 19 local consumer programs throughout the state. For consumer assistance or information, or for mediation services, contact either the Office of the Attorney General (OAG) or one of the local Consumer Programs listed in a town or city near you.

## **BOSTON OFFICE OF THE ATTORNEY GENERAL**

One Ashburton Place  
Boston, MA 02108  
(617) 727-8400

## **SPRINGFIELD OFFICE OF THE ATTORNEY GENERAL**

436 Dwight Street  
Springfield, MA 01103  
(413) 784-1240

## **BERKSHIRE COUNTY**

Berkshire County Consumer Advocates, Inc.  
150 North Street  
Pittsfield, MA 01201  
(413) 443-9128

## **BROCKTON**

Bentley Consumer Action Line  
Lindsay Hall, Bentley College  
175 Forest Street  
Waltham, MA 02154  
(800) 273-9494

## **CAMBRIDGE/BOSTON**

Cambridge Consumers' Council  
831 Massachusetts Avenue  
Cambridge, MA 02139  
(617) 349-6150 (Cambridge)  
(617) 349-6153 (Boston)

## **CAPE COD**

Consumer Assistance Council, Inc.  
572 Main Street, #H-4  
West Yarmouth, MA 02673  
(508) 771-0700 or (800) 867-0701

**FALL RIVER**  
Consumer Service Office  
One Government Center  
Fall River, MA 02722  
(508) 324-2000

**FRANKLIN COUNTY**  
Consumer Protection Office  
District Attorney's Office  
238 Main Street, 4th Fl.  
Greenfield, MA 01301  
(413) 774-5102

**HAVERHILL**  
Consumer Protection Program  
Haverhill Community Action, Inc.  
25 Locust Street  
Haverhill, MA 01830-5617  
(508) 373-1971

**LAWRENCE**  
Greater Lawrence Community Action, Inc.  
350 Essex Street  
Lawrence, MA 01843  
(508) 681-4990

**LOWELL**  
Middlesex Community College  
Law Center  
33 Kearney Square, Room 117  
Lowell, MA 01852-1987  
(508) 656-3342

**MEDFORD**  
Medford Consumer Advisory Commission  
90 Main Street  
Medford, MA 02155  
(617) 393-2460

**NEW BEDFORD**  
Consumer Assistance Council  
572 Main Street, #H-4  
West Yarmouth, MA 02673  
(508) 771-0700 or (800) 867-0701

**NEWTON**  
Newton-Brookline Consumer Office  
1000 Commonwealth Avenue  
Newton, MA 02159  
(617) 552-7205

**NORFOLK COUNTY**  
Consumer Protection Div.  
Norfolk District Attorney's Office  
10 Granite Street  
Quincy, MA 02169  
(617) 984-5600

**NORTH WEYMOUTH**  
MassPIRG Consumer Action Center  
182 Green Street  
North Weymouth, MA 02191  
(617) 335-0280

**REVERE**  
Consumer Affairs Office  
Revere City Hall  
281 Broadway  
Revere, MA 02151  
(617) 286-8114

**METROWEST**  
Consumer Assistance Office of Metro West  
209 West Central Street  
Natick, MA 01760  
(508) 651-8812

**SOUTH SHORE**  
Consumer Aid Program  
South Shore Community Action Council  
265 South Meadow Road  
Plymouth, MA 02360  
(508) 747-7575 ext 25 or 26

**SPRINGFIELD**  
Consumer Information Center  
P.O. Box 1449  
Springfield, MA 01101  
(413) 263-6513

**WORCESTER**  
Worcester Community Action Council, Inc.  
484 Main Street, Second Fl.  
Worcester, MA 01608  
(508) 754-1176



# The Attorney General's Guide for Homeowners



*A public service from:*

**Massachusetts  
Attorney General  
Scott Harshbarger**

